

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATHAN SEASTRUNK,

No. C 08-3444 WHA (PR)

Petitioner,

**ORDER DENYING MOTION
FOR STAY**

v.

D. K. SISTO, Warden,

(Docket No. 20)

Respondent.

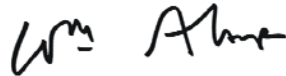
Petitioner, proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. 2254 setting forth nine claims. One claim was dismissed as not cognizable, and respondent was ordered to show cause why the petition should not be granted based on the remaining eight claims. Respondent filed an answer and supporting papers denying the claims and petitioner filed a traverse. Petitioner has now filed a motion to stay this matter while he exhausts additional claims in the state court, which claims he would like to add to this action via amendment following exhaustion.

The United States Supreme Court has held that district courts have authority to stay mixed petitions to allow exhaustion. *Rhines v. Webber*, 125 S.Ct. 1528, 1535 (2005). Petitioner has not met either of the two requirements for a stay, however. A stay can only be granted upon a showing of good cause for petitioner's failure to exhaust the issues before filing the federal petition, and a showing that the issues which the petitioner proposes to exhaust are "potentially meritorious." *Id.* Petitioner has not explained, let alone demonstrated good cause,

1 why he did not exhaust his additional claims before filing this federal petition. In addition,
2 petitioner has not identified the additional claims he wishes to exhaust, so it cannot be
3 determined whether they are potentially meritorious. Accordingly, the motion for a stay (docket
4 number 20) is **DENIED** without prejudice to refiling a motion for a stay that makes the required
5 showing under *Rhines*.

6 **IT IS SO ORDERED.**

7 Dated: November 18, 2009

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9 WILLIAM ALSUP
10 UNITED STATES DISTRICT JUDGE
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